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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,882	07/15/2003	David T. Jennings III	BRI/020	7471

7590

07/26/2004

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EXAMINER
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GREENE JR, DANIEL LAWSON

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/619,882

Applicant(s)

JENNINGS, DAVID T.

Examiner

Daniel L. Greene Jr.

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14-18 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 3/22/2004 have been fully considered but they are not persuasive.
2. In response to applicant's argument that U.S. Patent No. 6,166,452 to Adams et al. ("Adams"), directed to an igniter for use in the gas generators of vehicle safety systems is not analogous art capable of rejecting the instant application, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).
3. In response to applicant's arguments, the recitation "for use in mining or blasting" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

4. In response to Applicant's argument in reference to the declaration filed 3/22/2004, that Bailey and therefore Adams are non-analogous art since they are directed to igniters for use in gas generators of vehicle safety systems, it has been held that the determination that a reference is from a non-analogous art is twofold. First, it must be decided if the reference is within the field of the inventor's endeavor. If it is not, the determination must be made whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171, 174.

5. In the declaration filed 3/22/2004, Marshall et al. (US 6,079,332) is classified 102/202.5 - Ammunition and Explosives/Igniting Devices and Systems/Electrical primer or igniter - and Bailey (US 5,988,069) is cross-referenced to the same class. This would tend to indicate that the Bailey reference is analogous art and therefore so is the Adams reference, since Adams and Bailey are both directed to igniters for use in gas generators of vehicle safety systems. These facts are further supported by Adams disclosure col. 1, lines 23-26, wherein it states, "It would be advantageous to have similar capabilities for selectively igniting various units of reactive selected variables, such as explosives, in mining or demolition operations", regardless of Applicant's statements otherwise.

6. In response to Applicant's argument in reference to paragraph 4 of the declaration filed 3/22/2004 that Marshall et al. in view of Bailey (and therefore Adams) would lead one away from the claim invention due to size and shape requirements involved, it would have been an obvious matter of design choice to size the necessary

pieces of the apparatus to any desired, since such a modification would have involved a mere change in the size of a component - a change in size is generally recognized as being within the level of ordinary skill in the art *In re Rose*, 105 USPQ 237 (CCPA 1955)), and, it would have further been obvious to one having ordinary skill in the art at the time the invention was made to create the desired shape, since there is no invention in merely changing the shape or size of an article without changing its function except in a design patent (*Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23).

7. In the case referenced by the declaration filed 3/22/2004, as well as the instant application, the functionality, regardless of size (large or small), of the device remains the same - to initiate an explosive charge.

8. The declaration under 37 CFR 1.132 filed 3/22/2004 is insufficient to overcome the rejection of claims 1,3-12,14-18 and 20 based upon 35 U.S.C 102(b) as being clearly anticipated by U.S. Patent No. 6,166,452 to Adams et al. ("Adams") as set forth in the last Office action because: As stated above, Adams is considered analogous art as the functionality of the devices is the same, i.e. to initiate an explosive charge.

9. In addition, the declaration under 37 CFR 1.132 filed March 22, 2004 is insufficient to overcome the rejection of claims 1,3-12,14-18 and 20 based upon Adams as set forth above because: it refers only to the system described in the application referenced by the declaration and not to the individual claims of the instant application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

10. For the above reasons the rejections of the prior Office action are sustained.

***Claim Rejections - 35 USC § 112***

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. **Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** After amendment, the resulting claim 18 contains redundant terms making the claim nonsensical.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L Greene Jr. whose telephone number is (703) 605-1210. The examiner can normally be reached on Mon-Fri 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DIG 7/20/2004

  
ACTING SPE 2641  
JACK KEITH  
PRIMARY EXAMINER